Section III:

AMENDMENT UNDER 37 CFR §1.121 to the DRAWINGS

No amendments or changes to the Drawings are proposed.

Section IV:

AMENDMENT UNDER 37 CFR §1.121

REMARKS

Nature of Amendment

In the present amendment, we have amended claims 13 - 21 directed towards systems embodiments of our invention, and we have cancelled all other pending claims from further consideration in this application. We are not conceding that the subject matter encompassed by the cancelled claims prior to this Amendment are not patentable over the art cited by the Examiner. Amendment and cancellation of these claims are made solely to facilitate expeditious prosecution of at least a portion of allowable subject matter in this application. We respectfully reserve the right to pursue claims, including the subject matter encompassed by the cancelled claims, as present prior to this Amendment and additional claims in one or more continuing applications.

Rejections Under 35 U.S.C. §103(a)

We appreciate the Examiner's reconsideration and withdrawal of the rejections over Herman in view of Goldberg.

With respect to the rejections over newly-cited Miller in view of Goldberg, we respectfully maintain our previous arguments and interpretations of Goldberg. For brevity of record, we incorporate those previous arguments into the present reply.

With respect to the teachings of Miller, it is unclear to us from the explanation in the Office Action where a trader appears in either Miller or Goldberg. Miller's *"arbiter"*, which is a machine, receives sealed bids for computer bandwidth, but does not transmit any bids to anyone or anything else. Instead, Miller's arbiter decides which bidders receive (e.g. win) bandwidth, and transmits *"resource grant messages"* (col. 4, lines 13 - 15), which are not copies of bids or requests, of course. So, Miller could be said to block transmission of *all* bids to any user, regardless of seal status.

We also respectfully disagree that Miller teaches a "trader", wherein a trader is defined in our claims as an *"intermediary third party user communicably disposed between a bidder user and an offeror user"*. Miller does not use the term "trader", and the Office Action did not

contain a specific example of what was considered to meet our definition of a *trader*. Figure 4 shows some intermediary things, but none of those things (E-SW and F-SW) are users, they are electronic switches, which are not the same as a user in an electronic auction, of course. We respectfully request clarification from the Examiner as to what is specifically being considered in the Miller disclosure to be our trader.

Goldberg is also silent regarding transmission of unsealed bids *to a trader*, and restriction of transmission of sealed bids *to a trader*. And, as previously argued, Goldberg is silent regarding *sealed* and *unsealed* bids, but instead teaches *encryption* of all bids and transmission of *all* bids to a user.

Therefore, we believe neither Miller nor Goldberg transmits bids *to a trader*.

And, because neither Miller nor Goldberg selectively transmits bids (e.g. Miller blocks all bids and Goldberg transmits all bids), neither reference is *responsive to bid seal status*, as we have claimed. We respectfully ask the Examiner to use the conventional definition of "responsive" (e.g. in response to an event or stimuli), where our response is to a bid's seal status. Miller and Goldberg are not responsive to seal status, we believe.

We are amending our claims to clearly specify our definition of a *trader*, and to specify our elements which are *responsive to seal status*. We respectfully submit that Miller in view of Goldberg fails to teach for fairly suggest transmission of bids (a) *to a trader* and (b) *responsive to unsealed status of the transmitted bids*.

For these reasons, we respectfully request reconsideration and allowance of claims 13 - 21.

Rejections under 35 USC §101

We appreciate the Examiner's reconsideration and withdrawal of the holding that our recited term "providing" did not refer to any machine or equipment, and that our recited term "querying" of a database represented a mental process.

We respectfully disagree with the Examiner's reasons for rejection of claims 1 - 13 as set forth in the new Office Action. The Examiner stated that the claims do not transform underlying subject matter to a different state or thing. "Presenting" (e.g. displaying) information to a computer user requires transformation of a "thing" which includes matter, such as illuminating liquid crystal display, plasma, or cathode ray tube pixels. These pixels must transform state,

from dark to light, light to dark, shift in colors, or a combination of brightness and color change. These changes include optical, chemical, and/or electrical changes in their physical characteristics which are tangible.

In the present amendment, we have cancelled these claims to allow prosecution to proceed. However, we respectfully reserve the right to file claims to a corresponding method and a corresponding computer readable memory encoded with software.

Response to Examiner's Statement Regarding Anticipation and Objectives

We agree with the Examiner that a claim may be properly rejected if a reference anticipates under 35 U.S.C. §102 the structure set forth in the claim, even though the objective of the reference may differ from the objective of the claimed invention.

However, our argument was not limited to differing objectives of the cited reference and our invention. Instead, our argument started with a premise that *because the two objectives were different*, and then proceeded from the premise to the position that there were resulting differences in the two structures. Therefore, we believe the argument was pertinent and relevant under 35 U.S.C. §102 because the premise regarding differing objectives supported an argument of differences in structure and/or method.

Request for Determination of Ordinary Skill Level

We respectfully repeat our request for an indication from the Examiner regarding the results of the third factual inquiry for establishing obviousness as set forth by the Court in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17 - 18 ("Graham"), namely "resolving the level of ordinary skill in the pertinent art". We note that the Examiner has quoted this requirement in the rationale for the Office Action, but the Examiner, acting as a fact finder, has not provided this information to us. The U.S. Supreme Court in *KSR Int'l v. Teleflex Inc., et al.,* (U.S. Supreme Court, April 30, 2007) ("KSR") has emphasized the importance of resolving the ordinary skill level using explicit analysis:

> ". . . To determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace;

> and to the background knowledge possessed by a person having ordinary skill in the art. **To facilitate review, this analysis should be made explicit**. . . . "

We believe that a *prima facie* case of obviousness cannot be established without completing all of the *Graham* inquiries, including explicit determination of ordinary skill level.

For these reasons, we repeat our request for an explicit determination of the ordinary skill level at the time of our invention.

Request for Indication of Allowable Subject Matter

We believe we have responded to all grounds of rejection and objection, but if the Examiner disagrees, we would appreciate the opportunity to supplement our reply.

We believe the present amendment places the claims in condition for allowance. If, for any reason, it is believed that the claims are not in a condition for allowance, we respectfully request constructive recommendations per MPEP 707.07(j) II which would place the claims in condition for allowance without need for further proceedings. We will respond promptly to any Examiner-initiated interviews or to consider any proposed examiner amendments.

Respectfully,

/ Robert Frantz /

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